

BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA

Order Instituting Rulemaking Into
Implementation of Pub. Util. Code § 390.

Rulemaking 99-11-022
(Filed November 11, 1999)

**ADMINISTRATIVE LAW JUDGE'S RULING
SETTING PREHEARING CONFERENCE
TO DISCUSS NEED FOR EVIDENTIARY HEARINGS**

Summary

This ruling sets a prehearing conference (PHC) for November 7, 2003, to discuss whether evidentiary hearings are needed to resolve matters remanded by the California Court of Appeal (Court) in its Opinion filed September 4, 2002.

Background

In an Administrative Law Judge's (ALJ) Ruling January 14, 2003, parties were provided an opportunity to file comments and reply comments regarding the Courts' remand of matters pertaining to Short Run Avoided Cost (SRAC) prices for the period December 2000 through March 2001 (Remand Period). The January 14, 2003, Ruling requested responses from parties to questions regarding whether SRAC prices between December 2000 and March 2001 were correct, methodologies for determining correct SRAC prices, as well as other related issues.¹ Parties' comments were filed February 7, 2003, and reply comments were filed March 4, 2003.

¹ See ALJ Ruling requesting comments and reply comments on SRAC Cost Prices and Natural Gas Indices Used Between December 2000 and March 2001, pp. 5-6, issued January 14, 2003.

In the California Cogeneration Council's (CCC) comments, the CCC contends "the Commission should require that proponents of a retroactive adjustment to SRAC prices demonstrate the need to do so by clear and convincing evidence."² Southern California Edison Company's (Edison) reply comments state "the *only* issue before the Commission is whether there is substantial evidence supporting the lawfulness of the SRAC formula during the period December 2000 through March 2001."³ Pacific Gas and Electric Company's (PG&E) comments request that "the evidence demonstrating market gas manipulation should be judicially noticed or admitted into evidence...."⁴ The Cogeneration Association of California and Energy Producers and Users Coalition's comments state that "substantial evidence demonstrates that the utilities' actual or recorded avoided costs during the refund period far exceeded the prices paid to Qualifying Facilities during that period under the Pub. Util. Code § 390 SRAC formula,"⁵ a position generally supported by Tractebel Power Inc. Comments of other parties allude to gas market manipulation, and emerging evidence of market abuse during the Remand Period.

² Comments of the CCC on the SRAC prices and Natural Gas Indices used Between December 2000 and March 2001, p. 5, February 7, 2003.

³ Edison's Reply Comments, p. 2, March 4, 2003.

⁴ PG&E Comments, p. 16, February 7, 2003.

⁵ Reply Comments of the Cogeneration Association of California and the Energy Producers and users Coalition on SRAC prices and Natural Gas Indices used between December 2000 through March 2001, p. 1, March 4, 2003.

Since the filing of parties' comments, certain Federal Regulatory Energy Regulation Commission (FERC) opinions⁶ and other documents⁷ provide further insight into California gas practices and prices during the Remand Period.

In consideration of the statements by parties regarding evidence, and the new information available as a result of FERC documents, a PHC will be held November 7, 2003, to address whether testimony and evidentiary hearings are necessary to resolve factual issues and reach a decision on the matters remanded by the Court. Parties should be prepared to propose a schedule for testimony and evidentiary hearings, if necessary.

As an alternative to testimony and evidentiary hearings, the PHC will consider whether to address these matters through the filing of additional comments and reply comments.

Therefore, **IT IS RULED** that:

1. A Prehearing Conference is set for November 7, 2003, at 10:00 a.m., in the Commission Courtroom, State Office Building, 505 Van Ness Avenue, San Francisco, California.

⁶ See for example, FERC Order on Proposed Findings on Refund Liability, issued March 26, 2003, in Docket No. EL00-95-045.

⁷ See for example, Staff Final Report on Price Manipulation in Western Markets: Fact-Finding Investigation of Potential Manipulation of Electric and Natural Gas Prices, Docket No. PA02-2-000 (March 26, 2003).

2. Parties should be prepared to discuss the need for testimony and evidentiary hearings, a schedule, and other issues as discussed in this ruling.

Dated October 15, 2003, at San Francisco, California.

/s/ BRUCE DE BERRY
Administrative Law Judge
Bruce DeBerry

CERTIFICATE OF SERVICE

I certify that I have by mail this day served a true copy of the original attached Administrative Law Judge's Ruling Setting Prehearing Conference to Discuss Need for Evidentiary Hearings on all parties of record in this proceeding or their attorneys of record.

October 15, 2003, at San Francisco, California.

/s/ HELEN FRIEDMAN
Helen Friedman

N O T I C E

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.

The Commission's policy is to schedule hearings (meetings, workshops, etc.) in locations that are accessible to people with disabilities. To verify that a particular location is accessible, call: Calendar Clerk (415) 703-1203.

If specialized accommodations for the disabled are needed, e.g., sign language interpreters, those making the arrangements must call the Public Advisor at (415) 703-2074, TTY 1-866-836-7825 or (415) 703-5282 at least three working days in advance of the event.